CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:	CCRB Case #:		Force	V	Discourt.	☐ U.S.
Santosh Prakash		Squad #10	201505331	Ø	Abuse		O.L.	☐ Injury
Incident Date(s)		Location of Incident:	•	Р	recinct:	18	Mo. SOL	EO SOL
Monday, 06/29/2015 12:20 AM		§ 87(2)(b)			75	12	2/29/2016	12/29/2016
Date/Time CV Reported		CV Reported At:	How CV Reported:		Date/Time	Rece	eived at CCI	RB
Mon, 06/29/2015 11:17 AM		CCRB	Phone		Mon, 06/2	9/201	5 11:17 AN	А
Complainant/Victim	Type	Home Addre	ess					
Witness(es)		Home Addre	ess					
Subject Officer(s)	Shield	TaxID	Command					
1. POM Michael Ardolino	03101	951507	075 PCT					
2. SSA Robert Martinez	01369	922716	075 PCT					
Officer(s)	Allegation	on			Inve	estiga	tor Recon	nmendation
A.POM Michael Ardolino		PO Michael Ardolino en , in Brooklyn.	tered § 87(2)(b)					
B.POM Michael Ardolino	Abuse: PO Michael Ardolino searched 8 87(2)(b) in Brooklyn.							
C.POM Michael Ardolino	Abuse: PO Michael Ardolino threatened to notify Administration for Children's Services.							
D.SSA Robert Martinez	Abuse: Sgt. Robert Martinez frisked § 87(2)(b)							
E.SSA Robert Martinez	Discourt § 87(2)(b)	esy: Sgt. Robert Martine	ez spoke discourteou	sly t	0.0			
F.SSA Robert Martinez	Abuse: S	gt. Robert Martinez ento in Brooklyn.	ered § 87(2)(b)					
§ 87(2)(g), § 87(4-b)								

Case Summary

	g of June 29, 2015, \$87(2)(b) was asleep in he	
§ 87(2)(b)	in Brooklyn, along with her boyfrien	
night, § 87(2)(b)	present in the apartment were guests of §87(2)(b) and their child. At approximately	
_	woken by sounds outside their closed bedroom, whi	
	the bedroom door. When he did so, a plainclothes of	
	e bedroom, and instructed \$87(2)(b) to exit the a	
	ere another plainclothes officer, Sgt. Robert Martin	
§ 87(2)(b) and § 87(2)(b)	-	
	O Ardolino began demanding that \$87(2)(b) tell him	
	olino visually inspected the bedroom, §87(2)(b) tolo	•
	Ardolino allegedly tried to open a non-functioning	
	to the living room, where he searched beneath a dr	
	attempted to open a suitcase he found under the bed	
	to repeatedly ask §87(2)(b) about a gun, and told he	
	ell him where it was (Allegation C). As PO Ardoli	
	tinez was in the hallway with §87(2)(b)	and
	ile in the hallway, Sgt. Martinez frisked \$87(2)(b)	(Allegation D).
	point, Sgt. Martinez also entered the apartment bri	
	beaking with §87(2)(b) in the hallway, Sgt. M	
<u> </u>	ation F). After questioning \$87(2)(b) further about	
	did not result in any arrests or summons, and was n	
	87(2)(b) CCRB Statement; Sgt. Martinez's CCRB	
	Mediation, Civil, and Criminal Historic	<u>es</u>
	jected mediation. Notice of claim results are pending	ng.
[§ 87(2)(b)] [§§ 86(1)((3)&(4)] [§ 87(2)(c)]	
	Civilian and Officer CCRB Histories	
• This is § 87(2)(b	first CCRB complaint. § 87(2)(b)	
	<u> </u>	
• Sgt. Martine:	ez has been a member of service for 17 years: he ha	s been a subject in 29
previous CC	CRB complaints, and has six substantiated allegatio	ns against him. In CCRB #
200205713,	a Discourtesy - Word allegation was substantiated	l, and a penalty of
	Discipline – A was imposed. In CCRB # 200704280	

CCRB Case # 201505331

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Force allegations were substantiated, but no disciplinary action was taken. In CCRB # 201101407, a Frisk allegation was substantiated and Instructions were issued. In CCRB # 201101407, a Stop allegation was substantiated and Instructions were issued. In CCRB # 201310387, a Force allegation was substantiated, but the disposition is unknown.

• PO Ardolino has been a member of service for three years: he has been a subject in 4 previous CCRB complaints, none of which were substantiated. §87(2)(9)

Attempts to Contact Civilians

The investigation was unable to obtain any phone numbers or addresses When § 87(2)(b) provided a brief phone statement using § 87(2)(b) phone, she did not provide an address and stated that contacting \$87(2)(5) was the best way to contact her, because she did not own a phone. Despite numerous contact attempts phone, investigation could not reach § 87(2)(b) thereafter to schedule an in-person interview, and was unable to obtain a verified statement (See Civilian Contact Attempts, IA # 128). The investigation was unable to obtain any phone numbers or addresses declined to provide a phone statement when contacted via phone. The investigation was unable to reach him thereafter via §87(2)(b) phone (See Civilian Contact Attempts, IA # 128). The investigation was unable to obtain any phone numbers or addresses for § 87(2)(b) advised that § 87(2)(b) resided with her and shared her phone number, and a 2015 arrest report for \$87(2)(b) documented his address as \$87(2)(b) . However, the investigation was unable to reach § 87(2)(6) via § 87(2)(b) phone, and he did not respond to the letters sent to § 87(2)(b) (See Civilian Contact Attempts, IA # 128). While § 87(2)(b) provided a phone statement, she did not cooperate in providing a verified statement. § 87(2)(b) failed to appear for a scheduled in-person field interview, and did not respond to numerous phone calls and

Findings and Recommendations

letters sent to her residence (See Civilian Contact Attempts, IA # 128).

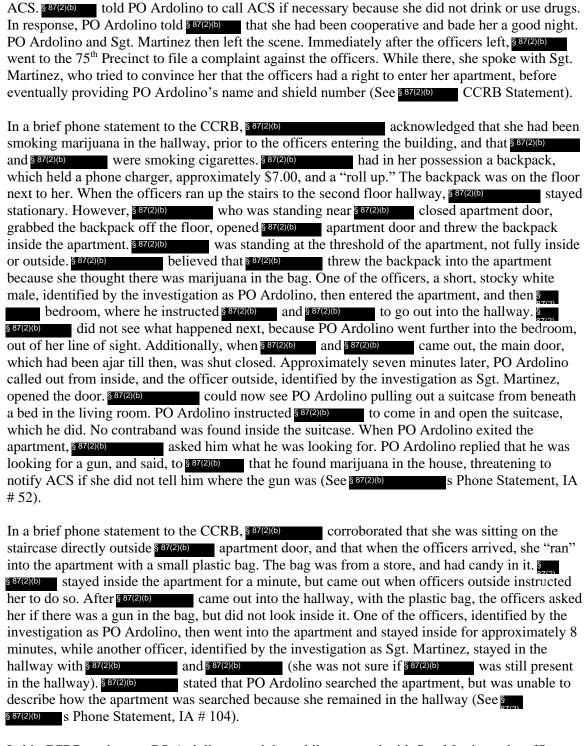
Subject Officer Identification

Both \$87(2)(b) and \$87(2)(b) described the officer who entered and searched the apartment, and threatened to notify IAB, as a stocky, 5'7" tall white male in his 30s. PO Ardolino, who acknowledged entering the apartment, is a year old 5'7" tall white male, weighing 190 pounds. \$87(2)(9)

Both \$87(2)(b) and \$87(2)(b) described the officer in the hallway as a 5'11" or 6'0 tall white male. Sgt. Martinez – who acknowledged standing in the hallway when PO Ardolino

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was inside the apartment, frisking $\$^{87(2)(5)}$ and briefly entering the apartment – is a 6'1" tall white male. $\$^{87(2)(9)}$
Allegations Not Pleaded
● § 87(2)(g)
Allegation A: Abuse – PO Michael Ardolino entered §87(2)(b)
Brooklyn. Allegation B: Abuse – PO Michael Ardolino searched 887(2)(b)
Brooklyn. Allegation C: Abuse – PO Michael Ardolino threatened to notify Administration for Children's Services.
It is not disputed that PO Ardolino entered § 87(2)(b) apartment. § 87(2)(9)
Prior to the officers entering the apartment building, \$87(2)(b) and \$87(2)(b) were standing in the second floor hallway of the building, outside \$87(2)(b) and \$87(2)(b) was smoking marijuana; when \$87(2)(b) saw the officers approach the hallway from downstairs, she went inside \$87(2)(b) which she was standing immediately in front of.
In her CCRB testimony, \$37(2)(b) stated that she was not aware that \$37(2)(b) and \$27(2)(b) had stepped out into the hallway, as she was asleep in her bedroom. When \$37(2)(b) opened the door after the two were awoken, PO Ardolino stepped into the bedroom, instructed \$37(2)(b) to exit the apartment, telling \$37(2)(b) "tell me where it is, tell me where it is." 10 asked "what," not knowing what PO Ardolino was referring to. PO Ardolino told \$37(2)(b) to tell him where the gun was, and that she would not be in trouble. \$37(2)(b) told PO Ardolino she did not have a gun and did not know what he was talking about. PO Ardolino then began "looking around" the room, continued to ask \$37(2)(b) where the gun was, and threatened to notify ACS, stating "I don't want to have to get ACS involved." \$37(2)(b) asked PO Ardolino why he would need to call ACS, and again said she did not have a gun in the house. PO Ardolino then attempted to open a non-functioning safe in the bedroom; went to the living room, where he searched under a mattress and under a bed, where he found and attempted to open a locked that belonged to \$37(2)(b) PO Ardolino instructed \$37(2)(b) to enter the apartment, and instructed \$37(2)(b) to go out into the hallway. Once in the hallway, \$37(2)(b) could not see what was happening inside the apartment. Approximately two minutes later, \$37(2)(b) returned to the hallway, and \$37(2)(b) opened the door. \$37(2)(b) observed PO Ardolino looking underneath a dresser. PO Ardolino continued to ask \$37(2)(b) where the gun was, again threatening to call



In his CCRB testimony, PO Ardolino stated that while on patrol with Sgt. Martinez, the officers received a cell phone call, from an officer at the 75th precinct stationhouse, about an individual

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with a gun at \$37(2)(5) , on the \$57(2)(5) floor. This officer, possibly assigned to the detective squad, who PO Ardolino could not identify by name or rank, relayed that a female complainant had reported an incident involving her boyfriend, who had a gun. The boyfriend was described as a "small" Hispanic male, with long "puffy" hair, and some facial hair. PO Ardolino could not recall if further descriptive information was relayed about the Hispanic male or if an exact apartment number was provided. PO Ardolino did not recall if any further details were provided about the identity of the complainant or the nature of the situation she described. PO Ardolino and Sgt. Martinez responded to \$37(2)(5) without requesting backup, and without transmitting the report over radio (See PO Ardolino's Statement).

Upon entering § 87(2)(b) PO Ardolino detected the odor of marijuana. The officers proceeded to climb the stairs to the floors above, in order to conduct a vertical patrol. When Sgt. Martinez and PO Ardolino rounded a short flight of stairs to the second floor, and came in view of the second floor hallway – a small rectangular space 7 feet by 3 feet – PO Ardolino observed three individuals in the hallway, two females standing (identified by the investigation as § 87(2)(b) and § 87(2)(b) and one male sitting down on the floor (identified by the investigation as § 87(2)(b) PO Ardolino observed that the marijuana odor had grown stronger on approach to the second floor and that §87(2)(b) fit the description of the Hispanic male suspect. When the officers approached the hallway up the stairs, \$87(2)(b) attempted to run up the staircase leading to the \$87(2) floor. Simultaneously, \$87(2)(b) had been standing close to an apartment door, suddenly darted into the apartment. PO Ardolino yelled "police, don't move," but § 87(2)(b) had already entered the apartment. PO Ardolino then pursued [887(2)[5] into the apartment, through the still open door, running closely behind her. As he was running behind her, \$37(2)(b) attempted to throw an object further into the apartment. PO Ardolino could not articulate what this object was, if he actually saw anything in or leave her hand. While running into the apartment, PO Ardolino observed a male (identified by the investigation as \$37(2)(5) standing at the entrance of a bedroom beyond the living room. Upon seeing PO Ardolino, § 87(2)(b) moved behind a bedroom wall, leaving PO Ardolino's line of sight. After pursuing § 87(2)(b) into the living room, about 15 feet from the door, she stopped and stayed stationary, at which time PO Ardolino determined by visual inspection that - who told him she was a guest and not a resident - was not carrying any weapons. PO Ardolino instructed § 87(2)(b) to exit to the hallway, and then went into the bedroom, where he found \$87(2)(b) in a corner, a female (identified by the investigation as \$87(2)(b) near a bed, and a child sleeping on the bed. PO Ardolino also noticed another child sleeping on a bed in the living room. PO Ardolino conducted a brief visual inspection of the room and determined that neither § 87(2)(b) nor §87(2)(b) had any weapons or posed a threat. PO Ardolino explained to \$87(2)(b) that they had information about a gun at the location, and had followed § 37(2) into the apartment after she fled inside (See PO Ardolino's Statement).

When PO Ardolino ultimately exited the apartment, he advised Sgt. Martinez that he had noticed two children sleeping inside the apartment. PO Ardolino felt he was obligated to notify Sgt. Martinez, as he knew that drugs were being consumed in the hallway. PO Ardolino did not recall discussing ACS with Sgt. Martinez, and denied raising the subject of ACS with any civilians. PO Ardolino did not recover any drugs or observe any physical traces of drugs in the hallway or apartment. PO Ardolino did not search the apartment for a gun, and denied searching under any mattresses, opening any bags or suitcases, or instructing any civilians to open any suitcases. PO

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Ardolino testified that the only reason he entered the apartment was because \$87(2)(b) matched the suspected gunman's description, and because \$87(2)(b) who was close to \$87(2)(b) fled into the apartment (See PO Ardolino's Statement).

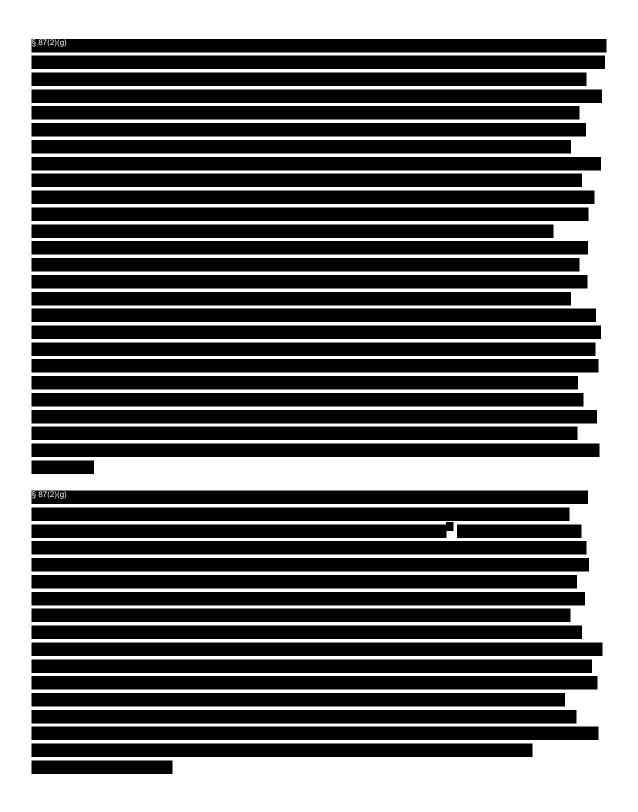
In his CCRB testimony, Sgt. Martinez testified that he received a cell phone call from an Anti-Crime officer at the stationhouse, PO Pralgo, who said that he had been told by a member of the detective squad that a gun was reported at §87(2)(b) . PO Pralgo told Sgt. Martinez that a female had called the detective squad, and reported that someone at §87(2)(b) had a gun on them. PO Pralgo told Sgt. Martinez that the female caller had described the suspect as a Hispanic male. Sgt. Martinez believed that a further description of the suspect was provided. but did not recall what this was. Sgt. Martinez did not recall any further information provided by PO Pralgo. Sgt. Martinez was under the impression that the gunman posed an active threat. Sgt Martinez corroborated PO Ardolino's account of what happened when the officers approached the § 97(2)(b) floor hallway. A few minutes later, PO Ardolino exited the apartment, with § the individual who had fled into the apartment. Sgt. Martinez did not communicate with PO Ardolino while he was inside the apartment, and did not know what PO Ardolino had done inside the apartment. Later that night, after Sgt. Martinez returned to the stationhouse, he briefly interacted with an individual he identified as the initial complainant who reported the gunman, who was at the stationhouse to file a complaint regarding the incident. The complainant, who Sgt. Martinez could not identify or describe, told him that she had a dispute with a male who lived at , and that this male had beaten her up and taken her belongings at gunpoint. Sgt. Martinez did not recall if the robbery occurred at § 87(2)(6) , and could not provide any further details about the incident, or the ultimate disposition of the complainant's report (See Sgt. Martinez's CCRB Statements from August 28 and September 11, 2015).

The CCRB requested the NYPD to provide all records of any reported robberies at \$87(2)(b), between July 28th and July 29th, 2015. The results revealed that there were no reported robberies at the location for the year 2015 (See Board Review – UF-61 Results).

In <u>Payton v. New York</u>, the United States Supreme Court ruled that warrantless entries into a private residence are presumptively unreasonable, unless there are exigent circumstances, in addition to pre-existing probable cause, justifying an exception to the general warrant requirement (See Board Review – <u>Payton v. New York</u>, 445 U.S. 573). In New York, factors indicating the presence of exigent circumstances have been identified as follows: 1) the serious or violent nature of the offense; 2.) there is reason to believe that the suspect is armed; 3.) the police have probable cause; 4.) there is strong reason to believe the suspect is in location to be entered; 5.) there is likelihood of the suspect escaping; 6.) whether or not the police entry is peaceful. (See Board Review – <u>People v. Cruz</u>, 41 Misc. 3d 1222(A)). Furthermore, a warrantless entry based on the exigent circumstances doctrine is not justified as "it does not excuse the lack of probable cause." (See Board Review – <u>People v. Rice</u>, 168 A.D.2d 901) Additionally, there is an "important caveat to the foregoing precedent; this exception to the warrant requirement applies to police pursuit into a residence for felony charges....when a suspect retreats into his or her house, and the suspected crime is only a violation or a misdemeanor, the "hot pursuit" exception does not apply." (*Id.*)

§ 87(2)(g)

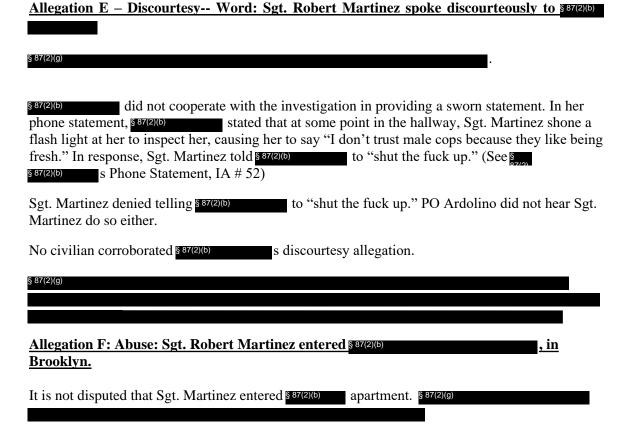
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§ 87(2)(g)
Allegation D: Abuse: Sgt. Robert Martinez frisked §87(2)(b)
It is not disputed that Sgt. Martinez frisked \$87(2)(b) \$87(2)(g)
In his CCRB testimony, Sgt. Martinez stated that upon seeing the officers approach the stairs to the
§ 87(2)(g)
§ 87(2)(g)

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Sgt. Martinez testified that upon PO Ardolino exiting the apartment, he told Sgt. Martinez that there were children in the apartment. PO Ardolino asked Sgt. Martinez if "they should do anything" about the children. Although PO Ardolino did not state or suggest anything specific inside the apartment that posed a danger to the children's safety, Sgt. Martinez decided to enter the apartment to verify for himself that there were no concerns in the apartment. Once inside, Sgt. Martinez walked down the hallway of the apartment, and saw children sleeping inside a bedroom to the back of the apartment. Sgt. Martinez did not recall exactly how far he went in, but stated he did not enter the living room. Upon seeing that the children were safe and that the apartment did not pose any threats, Sgt. Martinez walked out, spending approximately 30 seconds inside the apartment. Sgt. Martinez did not enter or search any interior areas of the apartment.

PO Ardolino acknowledged telling Sgt. Martinez that he saw two children sleeping inside the apartment. PO Ardolino did not provide any further information about what he said about the children, or why he raised the issue in the first place, aside from saying that he felt obligated to tell Sgt. Martinez due to the drugs being consumed in the hallway.

In New York State, the Court of Appeals "has outlined three elements to determine whether exigent circumstances exist to justify entry without a warrant: '(1) The police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property. (2) The search must not be primarily motivated by

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Review – People v. Musto, 106 A.D.3d 1380) § 87(2)(g), § 87(4-b)

intent to arrest and seize evidence. (3) There must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched." (See Board

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Squad:			
Investigato	or: Signature	Print	 Date
Pod Leade	r: Title/Signature	Print	Date
Attorney:	Title/Signature	Print	